IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8617 OF 2007

Shri Popat Ramu Dongare ...Petitioner

Versus

Shri Dhanaji Popat Dongare

and Ors. ....Respondents

Dilip Bodke, for the petitioners.

CORAM: S.C.DHARMADHIKARI, J.

13th December, 2007.

P.C. :

1. The Respondent nos.1 to 4 have been duly served and Mr.Bodke tenders an Affidavit proving service.

2. The petitioner is original defendant no.1 in Regular Civil Suit No. 115 of 1998. The petitioner applied on 15.10.2007 by filing an application, Exhibt-130 that his witness one Mr.Chavan is unable to remain present in the court for deposing in the said

case as he is ill and therefore he applied for adjournment.

3. That application was rejected on 15.10.2007 by the order at Exhibit-H, page 63.

4. A further order is passed on page 64 on the same date wherein the Learned Judge observed that the present petitioner is absent so also defendant no.7. His request to examine the witness, Mr.Chavan being rejected, the courts below proceeded to close the case and evidence of the present petitioner/defendant no.1. The matter was adjourned for recording of evidence of defendant no.2.

5. Thereafter the present petitioner filed an Application, Exhibit-131, and prayed that an opportunity be given to examine the witness by recalling the order of closing the evidence, inasmuch as, the said opportunity being denied, the petitioners would be shut out from the case completely. Even that application is rejected by the Trial Court on 23.10.2007.

6. The grievance of Mr.Bodke is that similar contingency occurred in the case of another defendant who was absent. But, insofar as, that defendant is concerned, the Trial Court allowed the application and permitted him to participate in that proceedings. Similarly, permission ought to have been granted to petitioner/defendant no.1. More so, when proof of the illness of the witness to be examined by the petitioner, is produced and is on record. Mr.Bodke, undertakes before me that the petitioner would now examine this witness on the adjourned date without seeking any adjournment and co-operate in the expeditious disposal of the suit pending in the Trial Court. Since none is present to oppose the request of Mr.Bodke, and the matter is essentially between the first defendant and the court, the interest of justice would be subserved if the orders passed on 15.10.2007 and 23.10.2007 are set aside to the extent of petitioner/defendant no.1 and he shall be allowed to lead his evidence, provided, he appears before the Learned Judge on 8.1.2008 and also keeps his witness present. The petitioner shall not seek any unnecessary

adjournment. Prior to the said date, the petitioner to deposit the costs quantified at Rs.1000/-.

7. Respondent nos.1 to 4 have been duly served and acknowledgement of service is filed on record. Respondent Nos.5 to 9 stand deleted. Petition disposed off. No costs.

sd/-

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